IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7249 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH SARVAIYA MANAGING DIRECTOR

Versus

GUJSYNTH PARTNER SHIP FIRM

Appearance:

1. Criminal Misc.Application No. 7249 of 2001

MR JB PARDIWALA for Petitioner No. 1

MR HRIDAY BUCH for Respondent No. 1

MR JOSHI, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2002

ORAL JUDGEMENT

1. Present application is preferred by the Managing Director of M/s Serene Industries Limited, situate in M.I.D.E., Lote Parshuram, Taluka Khed, District Ratnagiri, Maharashtra, against the order passed by

learned Judicial Magistrate, First Class, Valsad, on December 30, 2000, below Ex.17, in Criminal Case No.1886 of 1999, issuing non-bailable warrant against the applicant.

2. The facts of the case, in brief, can be stated thus:

2.1 Present respondent No.1 lodged a complaint before learned Judicial Magistrate, First Class, Valsad, against M/s Serene Industries Limited and one Mr. Sameer D. Sarvaiya under Section 138 of the Negotiable Instruments Act for dishonour of cheque. Accused No.2-Mr. Sameer D. Saraviya happened to be a director of the company and had signed the cheque, as alleged in the complaint. He was served with summons and appeared before the learned Judicial Magistrate, First Class. However, the summons against the company was sought to be served through the Manager and because the company had gone sick, it could not be served through the Manager. Therefore, an application was tendered before the learned Judicial Magistrate, First Class, Valsad, for issuance of the summons on the company through the Managing Director, i.e. present applicant, on 8.5.2000 vide Ex.12. The said application came to be granted.

2.2 Later on vide Ex.17, an application was made stating that the summons was served to the present applicant by substituted service. But as he did not appear, a bailable warrant came to be issued against him, which is not possible to be served as he is not making himself available and it was, therefore, urged that he is avoiding service of bailable warrant and, hence, non-bailable warrant may be issued. The learned Magistrate observed that, considering the endorsement made on the bailable warrant, the accused has come to know about the complaint and he is, therefore, absconding and is deliberately avoiding service of the process and, therefore, non-bailable warrant be issued against him. Aggrieved by this order, the applicant has approached this Court for quashment of the said order or, in the alternative, to convert the non-bailable warrant into a bailable warrant directing the applicant to present himself before the learned Judicial Magistrate, First Class on a particular date.

3. Heard learned advocate Mr. Pardiwala for the petitioner, learned advocate Mr. Buch for respondent No.1 and learned Additional Public Prosecutor, Mr. Joshi, for respondent No.2-State of Gujarat.

4. Learned advocate Mr. Pardiwala has drawn attention of this Court to the fact that the order is passed by the learned Judicial Magistrate, First Class, on a premise that the non-bailable warrant was sought against an accused whereas the present petitioner was not an accused in the matter when the order was passed. He, however, in all fairness, submitted that the applicant would be satisfied, if the relief sought by way of an alternative relief is granted.

5. Learned advocate Mr. Buch concedes to grant of the alternative relief sought in the petition. He, however, insists for an assurance from the applicant that he shall co-operate at the trial.

6. Having regard to the contentions raised before this Court, there is no dispute about the factual aspect that, when the order in question was passed, the present applicant was not an accused. A plain reading of the order in question indicates that the learned Magistrate proceeded on a premise that the bailable warrant was issued against an accused and he is avoiding service of the process and, therefore, non-bailable warrant was issued. Without entering into the question of merits of the original compalaint, since there is concensus about the fact that non-bailable warrant may be converted into bailable warrant, in order that it would facilitate the proceedings to proceed smoothly, the following order is passed :-

7. The non-bailable warrant issued by learned Judicial Magistrate, First Class, Valsad, by the impugned order is converted into a bailable warrant. The applicant shall appear before the learned Judicial Magistrate, First Class, Valsad, on the 20th February, 2002 without fail and without waiting for service of the warrant. On his appearance before the learned Judicial Magistrate, appropriate legal proceedings shall proceed.

8. It is made clear that this order will not affect the right of either parties of raising of permissible legal contentions before the Court. Rule is made absolute.

[A.L. DAVE, J.]

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